

# **DEFICIENCY PROGRESS REPORT – UPDATE 3**

Submitted: October 6, 2009

**CUPA: SAN BENITO COUNTY DIVISION OF ENVIRONMENTAL HEALTH**

**Evaluation Dates: November 4 and 5, 2008**

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**Submittal date (Update 1):** February 2, 2009

**Deficiencies corrected (Update 1):** 1, 6, 7 and 8

**Status:** Deficiencies 2, 3, 4, and 5 remain outstanding.

**Submittal Date:** July 13, 2009

**Deficiencies corrected (Update 2):** 4 and 5

**Status:** Deficiencies 2 and 3 remain outstanding.

**Submittal date (Update 3):** November 27, 2009

**Deficiencies corrected (Update 3):** 2 and 3

**Status:** No deficiencies remain outstanding

**Next Progress Report (4th Update) Due:** None

2. **Deficiency:** The CUPA is not fully tracking and reporting the enforcement actions taken on the Annual Enforcement Summary Report 4.

**Corrective Action:** By September 30, 2009, the CUPA will verify that the violations and enforcement data on the Annual Enforcement Summary Report 4 will be complete and as accurate as possible. By February 3, 2009, the CUPA will develop an action plan to remedy the situation and implement it. Beginning February 3, 2009, the CUPA will submit a progress report toward correcting this deficiency.

**CUPA Update 1:** The CUPA mistakenly did not count letters and /or notices sent to a business prior to submitting a case for legal action to be enforcement. It was thought that enforcement was the introduction of the legal system to resolve a non compliant condition.

**Insert # 2 -** The expanded enforcement report was presented to the State in annual summary report issued in September 2008 showing the enforcement report.

**Cal/EPA Response:** *Cal/EPA looks forward to tracking the CUPAs ongoing progress to comply with this corrective action. Cal/EPA will review the CUPAs annual summary report submittals for FY' 2008/2009 to verify the deficiency has been adequately addressed.*

**CUPA Update 2:** The 2008-2009 annual summary report will report 37 corrective action enforcement actions were implemented with two prosecuted by the DA. The previous fiscal year had 8 enforcement actions documented.

**Cal/EPA Response to (Update 2):** *Cal/EPA looks forward to reviewing the CUPA's annual summary report submissions on the next progress report for compliance, it is anticipated that the deficiency should be corrected by the next progress report.*

**CUPA Update 3:** In January 2009, every annual declaration from a business was screened and reviewed in light of their last inspection. Enforcement letters were issued to 17 businesses that did not submit their "return to compliance" from the previous year's inspection. All of these businesses came into compliance before a new permit was issued. Enforcement has increased due to the additional staff person and the development of a working relationship with the circuit prosecutor. In 2008-09, forty-one enforcement actions were initiated with five facilities referred to the circuit prosecutor. The involvement from the circuit prosecutor resulted in two actions successfully resolved without further action; two successfully prosecuted with a stipulated agreement and one remaining pending. Thirty-one of the remaining thirty seven enforcement actions were successfully settled and six cases remain pending.

**Cal/EPA Response to Update 3:** *The CUPA is now tracking and reporting formal and informal enforcement on Report 4. Cal/EPA considers this deficiency corrected.*

3. **Deficiency:** The CUPA has not performed an annual California Accidental Release Prevention (CalARP) self-audit in compliance with California Code of Regulations title 19.

**Corrective Action:** By February 3, 2009, the CUPA shall perform an annual CalARP performance audit that fulfills the regulatory requirements and submit a copy to Cal/EPA.

**CUPA Update 1:** The CUPA was unaware of the new CalARP self audit requirement and the self audit is being prepared and should be completed by June 30, 2009.

**Cal EMA Response:** Cal EMA feels that the time line is acceptable and looks forward to seeing the CUPA's annual CalARP Performance audit in their next progress report.

**CUPA Update 2:** The CUPA self audit has been completed and is awaiting local review and approval prior to inclusion into the annual summary report.

**Cal EMA Response to (Update 2):** *The Title 19 Annual Self Audit is a self audit that is to be performed for the internal use of the CUPA and the CUPA is not required to submit the Title 19 Annual Self Audit, however the CUPA is required to perform one annually. With that being said, the CUPA upon approval shall submit the Annual Self Audit to show correction of this deficiency and upon receipt of the Self Audit Cal EMA will see this deficiency as being corrected.*

**CUPA Update 3:**

2008-2009 San Benito County CalARP Program Self Audit  
June 12, 2009

Introduction

San Benito County is a California rural community. The County is located in the Central Coast Range between the Diablo Mountain Range to the east and the Gabilan Mountain Range on the west. Its economic base includes agriculture, light industry and tourism. San Benito County

covers 1396 square miles of land with approximately 65,000 residents. The majority of the residents live in the City of Hollister and in its surrounding area located in the northern portion of the County. Four State Highways run through the County. In the west are Highway 101 and 129. Running north and south is highway 25 and east to west is highway 156. The main corridors to Hollister are Highway's 25 and 156. The Union Pacific Railroad provides freight service to several locations in the County; the municipal airport is located in the City of Hollister and a private airfield is located north of Hollister.

All highways are heavily traveled with commuter traffic and truck traffic to and from the Bay Area. The County has a number of industries closely associated with hazardous materials and risks of incidents. These include, but are not limited to, facilities using ammonia, sulfur dioxide and methyl bromide above the minimum threshold amounts found in Table 3 of the California Accidental Release Prevention program regulations.

## Executive Summary

San Benito County has four facilities that are required to submit a Risk Management Plan. These facilities are Blossom Hill Winery, TriCal, Inc., Earthbound Farms and True Leaf Farms.

Blossom Hill is located in Paicines California and is operated by Diageo Chateau and Estate based in Napa California. Blossom Hill uses two substances regulated under the CalARP program that includes more than 8000 pounds of anhydrous ammonia and 11,000 pounds of sulfur dioxide. Anhydrous ammonia is used in ammonia refrigeration systems to cool wine after completion of fermentation and also to maintain the desired product storage temperature in buildings and tanks. Sulfur Dioxide is stored in one ton containers for use as an antioxidant and to control microbial growth. The threshold amount for both ammonia and sulfur dioxide is 500 pounds; Blossom Hill is required to comply with Program 3 criteria.

TriCal, Incorporated is located near the county line with Santa Clara County and receives stores, formulates and repackages fumigants that are used to control pests in farm soil throughout northern California. Methyl Bromide is received by way of rail tank cars. The maximum quantity of methyl bromide in the process is approximately 4,457,000 pounds. The threshold amount for methyl bromide is 1000 pounds; Tri Cal is required to comply with Program 3 criteria.

Earthbound Farms and True Leaf Farms are located near each other in the San Juan Valley. Both companies are lettuce processing facilities making various types of lettuce mix. True Leaf handles over 27,000 pounds of ammonia and Earthbound Farms handles over 38,000 pounds of ammonia. Anhydrous ammonia is used in precooling, cold rooms and process water chilling operations. Fresh produce is brought in from the fields and cooled to remove the field heat, and then it is stored in the cold room warehouses prior to production. As previously mentioned the threshold amount for ammonia is 1000 pounds and both facilities are required to comply with Program 3 criteria.

## Activities conducted in the 2008-2009 Fiscal Year

TriCal had submitted several risk management plans that were rejected in 2006, 2007 and 2008. Legal action was threatened before they submitted an acceptable risk management plan in June 2008. The toxic endpoint for methyl bromide covered mostly open land in San Benito

County however the toxic endpoint encompassed much of the residential and commercial shopping centers in Gilroy. Therefore, review of this plan and the inspection was coordinated with the City of Gilroy. The plan was eventually deemed acceptable and a joint inspection and audit were performed in March 2009. Final resolution of issues discussed during the audit remains pending.

The Earthbound Farms RMP was submitted in 2007 and deemed complete in late 2009. A compliance audit was performed in 2009. The new RMP was submitted, reviewed and approved in 2007. No comments were received from the public regarding the Earthbound Farms facility RMP.

The Blossom Hill facility RMP was received in 2007 and reviewed and accepted and inspected in 2008. A compliance audit was performed in March 2009. Final resolution of the issues presented during the audit remains pending.

The True Leaf Farms RMP was submitted and given an initial walk through inspection in 2009 but has not yet been accepted as complete. Once deemed complete an audit will be performed.

#### New Facilities/Processes

At this date no other facilities have reported or have been discovered to handle hazardous materials listed in table 3 that are above these threshold amounts.

#### Inspections

Inspections were conducted at all four facilities. Audits were performed at Blossom Hill for ammonia and sulfur dioxide; at Earthbound Farms for ammonia and; at Tri Cal for methyl bromide. An inspection at True Leaf for ammonia was done in conjunction with their consultant review during the process hazard analysis.

#### Enforcement Actions

An enforcement action was taken by the San Benito County District Attorney's Circuit Prosecutor against True Leaf Farms compelling them to submit an RMP.

#### Fees Collected

Surcharge fees collected by the CUPA and sent to the state for three of the four facilities equaled \$810.00 in the 2008-2009 fiscal year. CalARP program fees collected for the county equaled \$2085.00 for the 2008-2009 fiscal year.

True Leaf Farms is under orders to submit a business plan but has not complied as of yet with the court order as far as submitting fees and obtaining a permit. True Leaf Farms paid a \$ 750.00 penalty to Environmental Health; \$750.00 to the San Benito County District attorney, in addition True Leaf paid \$ 1000.00 to Environmental Health for cost recovery and \$ 500.00 to the District Attorney for cost recovery. As previously mentioned an additional \$ 4000.00 has been stayed pending compliance for three years. The surcharge and permit fee will be collected by the county with the surcharge submitted to the State.

## Program Time Accounting

The 2008-2009 fiscal year totals 2080 hours for one man year. Of this 1532 hours were work time and 548 hours were logged in as holidays, time off and travel time. In the last fiscal year 710 hours of work was performed in the CUPA program. This represents 46 % of the overall work time is spent working in the CUPA program.

Of the 710 haz mat hours, 68 hours were spent in the CalARP RMP program or 9.5 percent of my CUPA time was RMP's. This represents 4.4 percent of my overall environmental health time

**Cal EMA Response to Update 3:** *The audit information provided by the CUPA with the Update was generally satisfactory. Cal EMA does recommend, however, that in the future the CUPA ensure that all eight elements of 19 CCR 2780.5(b) are directly addressed, even if the answer is "no" or "none". It was, for instance, implied but not stated that no public comments were received (2780.5(b)(4)) and that no stationary sources were exempted (2780.5(b)(8)). Cal EMA considers this deficiency corrected.*